

The statute that has been cited is called the Government Internet Information Privacy Act ("Act") which was passed in 2001. The purposes of the Act are to (1) facilitate the use of the internet and (2) protect the privacy rights of internet users. At times, a tension exists between these purposes as the discussion below highlights.

The bill, which became the Act, was introduced by Representative Monica Lindeen, who stated that the "bill attempts to set in place the foundation of an information privacy policy for state and local government who provide a website. The reason for this is due to consumer concerns about privacy and security as far as their information being accessed or sold to third parties for marketing purposes...This bill will...also prohibit the collection of personal information for marketing purposes if the individual does not want their personal information sold." Mr. Tony Herbert from ISD also spoke in favor of the bill, stating that "It makes sense to have some information on the internet to encourage the use of electronic services and transactions. It is important that these issues be put in place so individuals have trust in the work that goes on with the state." See, Hearing on HB 281, House Committee on State Administration, January 18, 2001.

Below, Theresa highlighted one of the key sections of the statute. The phrase "unique identifying information" is not defined in the statute, but the legislature apparently believed that such information by itself could not lead to the discovery of the other personally identifiable information--that is, first and last name, residence or other physical address, email address, telephone number or social security number. That is why the statute states that the "unique identifying information" must be combined with the other private information to constitute "personally identifiable information." Section 2-17-551(6)(f), MCA. It is the collection and distribution or sale of this "personally identifiable information" that triggers the duties under section 2-17-552, MCA.

Therefore, Theresa is correct that the statute on its face provides that the "unique identifying information" must be combined with any of the other individual information to constitute "personally identifiable information." This means that if only the unique identifying information is provided or sold to a third party without combining it with any of the other personally identifiable information, then the operator does not need to include: (a) a clear and conspicuous notice to the user that the information collected could be used for other than the purposes of the website; (b) a general description of the types of third parties that may obtain the information; and (c) a clear, conspicuous and easily understood online procedure requiring an affirmative expression of the user's permission before the information is collected. Section 2-17-552(3)(a)(b)(c), MCA.

The key, however, is to ensure that the unique identifying information, including IP addresses, cannot be used to access other "personally identifiable information." Again, the legislature apparently assumed that providing only the "unique identifying information" without the user's permission would

not lead to discovery of the other personal information. I do not know enough about the personal information doors an IP address can unlock, but if a reasonable doubt exists, I would err on the side of protecting the user's privacy by getting their approval for the use. This is only my suggestion and not an explicit requirement under the Act.

It is also important to note that section 2-17-553, MCA, states: "Sections 2-17-550 through 2-17-553 are not intended to expand or restrict the individual right of privacy or the public right to know or to change the rights and obligations of persons, state agencies, or local governments that are otherwise provided by law." This section underscores the importance of being circumspect about providing user information.

You should also review the ITSD Internet Privacy and Security Policy. This Policy is informative and outlines how the department will handle privacy issues. It does not appear to address the issue you have raised concerning "unique identifying information," but let me know your thoughts on that.

Finally, the State of Utah has posted on its web site the following regarding the information that may be automatically collected when a user accesses a web site:

Collection of Information

The following information may be automatically collected and retained if you look or search through our web pages, or download information:

- The Internet domain and Internet Protocol (IP) address of the computer you are using to access our site;
 - The type of browser and operating system used to visit our site;
 - The date and time of when you access our site; and
 - Which portions of the website you visit

The data collected serve as part of our statistical analysis about the use of our Web sites so we may better design online services and improve access to them. We do not attempt to gain personally identifiable information about individual users and associate it with IP addresses. The State does not use the information automatically collected to ascertain your personally identifiable information.

A statement like this may be helpful to educate users about the use of the above information.

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